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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------|------------------|
| 10/771,755 | 02/04/2004 | John Brotzman | BAC-002 | 3649 |
| 35557 | 7590 | 03/29/2006 | | |
| CHRIS A. CASEIRO VERRILL DANA, LLP ONE PORTLAND SQUARE PORTLAND, ME 04112-0586 | | | EXAMINER FOX, JOHN C | |
| | | | ART UNIT 3753 | PAPER NUMBER |

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/771,755 | BROTZMAN, JOHN | |
| | Examiner John Fox | Art Unit 3753 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 March 2006.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-5 and 12-16 is/are rejected.
 7) Claim(s) 6-11 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

This action is responsive to the communication filed March 9, 2006.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson, of record, in view of Bachmann '169.

Thompson shows a valve actuator with electric motor pivoted to pin 11b and rotating screw 12 to move nut 15 and pivot arm 16 to actuate a valve, but the valve is not a diverter. Bachmann shows a diverter valve. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used the actuator of Thompson to operate the diverter valve of Bachmann in view of the readily apparent equivalence of the rotary actuators.

Claims 2, 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Generke in view of Bachmann as applied above and further in view of Lutz.

Thompson, as modified, shows the claimed device except for a ball screw and the output shaft being journaled in openings in the sidewalls of the housing. Lutz shows a similar mechanism with those features. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used such a ball screw for the follower 134 of Thompson to reduce friction and to have used such journals to better support the output shaft of Thompson.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson in view of Bachmann as applied above and further in view of Brazil et al.

Thompson, as modified, teach the claimed device but discloses any type of power source to rotate the screw. Brazil et al show a variable frequency motor to drive a rotary device. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used such a motor to drive the actuator of Thompson, as modified, to provide rotation of the screw.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson in view of Bachmann as applied above and further in view of Weber.

Thompson, as modified, shows the claimed device except for a lockout. Weber shows a ball screw mechanism with a lockout 58/50 to prevent unwanted motion of the actuator. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used such a lockout on the device of Thompson, as modified, to similarly prevent unwanted motion of the drive thereof.

Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson in view of Bachman et al and Lutz as applied above and further in view of Weber. Weber shows a ball screw mechanism with a lockout 58/50 to prevent unwanted motion of the actuator. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used such a lockout on the device of Thompson, as modified, to similarly prevent unwanted motion of the drive thereof.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson in view of Bachman et al and Lutz as applied above and further in view of Brazil. Brazil et al show a variable frequency motor to drive a rotary device. It would have been obvious for one of ordinary skill in the art at the time the invention was made

to have used such a motor to drive the actuator of Thompson, as modified, to provide rotation of the screw.

Claims 6-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Fox whose telephone number is 571-272-4912. The examiner can normally be reached on Increased Flextime.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keasel Eric can be reached on 571-272-4929. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John Fox
Primary Examiner
Art Unit 3753